IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

OP.No. 33831 of 2001(C)

PETITIONER:

R.K.UBAIDU, CIVIL CONTRACTOR,
RAYAMARAKKAR VEETTIL,
WEST PATAKULAM,
KODUNGALLOOR P.O.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:
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1. THE SALES TAX OFFICER (WC&LT),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, THRISSUR.

2. THE APPELLATE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, THRISSUR.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE RETURN IN FORM NO.9 FOR 1997-98 DT.18.6.99 SUBMITTED BY PETITIONER.

P2: TRUE COPY OF THE STATEMENT IN FORM 21C DT.4.4.98 SUBMITTED BY PETITIONER.

P3: TRUE COPY OF THE APPLICATION IN FORM 21 B DT.18.6.99 SUBMITTED BY PETITIONER.

P4: TRUE COPY OF THE PETITION FOR 1997-98 DT.10.12.2000 SUBMITTED BY PETITIONER BEFORE R1.

P5: TRUE COPY OF THE ASSESSMENT ORDER OF 97-98 DT.16.12.2000 OF R1.

P6: TRUE COPY OF ASSESSMENT ORDER FOR 98-99 DT.16.12.2000 OF R1.

P7: TRUE COPY OF ASST. ORDER FOR 1999-2000 DT.16.12.2000 OF R1.

P8: TRUE COPY OF PETITION DT.20.6.2001, SUBMITTED BY PETITIONER BEFORE R1.

P9: TRUE COPY OF THE REMINDER PETITION DT.5.7.2001 SUBMITTED BY PETITIONER BEFORE R1.

P10: TRUE COPY OF LETTER DT.9.7.2001 OF R1.

P11: TRUE COPY OF APPELLATE ORDER DT.12.10.2001 OF R2.

P12: TRUE COPY OF NOTICE DT.28.9.2001 OF R1.

P13: TRUE COPY OF NOTICE DT.28.9.2001 OF R1.

P14: TRUE COPY OF REPLY LETTER DT.9.10.2001 SUBMITTED BY PETITIONER BEFORE R1.

P15: TRUE COPY OF CERTIFICATE DT.10.12.2000 ISSUED BY ASST. EXECUTIVE ENGINEER, ADDL. IRR. SUB DIVISION, THRISSUR.

P16: TRUE COPY OF CERTIFICATE DT.6.9.2001 ISSUED BY EXE. ENGINEER, ADDL. IRR. DIVISION, THRISSUR.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 33831 OF 2001

Dated this the 19th day of March, 2007

JUDGMENT

Petitioner is challenging Exts. P12 and P13 notices proposing to revise the sales tax assessments for 1997-98 and 1998-99 at higher rate on the ground that tax at compounded rate originally assessed is done by mistake. Government Pleader submitted that sea wall construction works was not included as civil work for compounding during the relevant years. However, counsel appearing for the petitioner on the other hand contended there is exemption from payment of tax as rubble was entitled to exemption. However, in similar case, this Court has held that sea wall work is done with stones of specific dimensions, which cannot be called rubble which are stones of uneven and smaller sizes. If stone blocks of specific dimensions are used exemption is not available to such cases. What is required is to verify the written contracts between the concerned department and the petitioner, and see provision for taxation there. Since awarder is Government department, rate of tax should be applied in terms of tender conditions accepted by

parties. If compounded rate of tax is less than the contract rate reimbursed or collected then difference can be recovered from the petitioner or if petitioner has remitted excess rate then the same is to be forfeited under Section46A(1) of the Act. If the rate of tax originally assessed at 2% is the rate agreed between the parties, then there is no scope for reassessment. First respondent is directed to call for copies of contract and details of bills cleared from the concerned department, verify the same and modify the assessment only if required after giving opportunity to the petitioner and subject to above observation. If no modification is called for, he will recall the notice. Final orders should be communicated to the petitioner within three months from now.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge